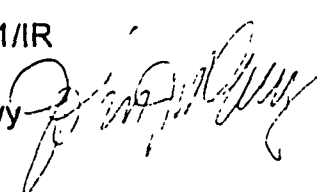


Office of Chief Counsel
Internal Revenue Service
memorandum

CC:PA:APJP:1/JDewald
POSTN-168215-02

date: February 28, 2003

to: Michael F. LaMothe
Program Analyst
CL:GLD:GL 1611/IR

from: John J. McGreevy 
Senior Advisor
CC:PA:APJP

subject: Filing Forms 1099 for Tax Amnesty program

This memorandum responds to your December 18, 2002, e-mail asking whether interest and additions to tax that are forgiven as part of a state tax amnesty program are includible in the taxpayer's gross income and therefore required to be reported on Form 1099.

The Office of the Associate Chief Counsel (Income Tax & Accounting), Branch 4, has declined to give an opinion to a state on the issue of whether the interest and addition to tax that is forgiven is income to the taxpayer. They have informed us that more facts would be needed regarding the taxpayer's situation before advice can be given. Please contact Branch 4 at (202) 622-4920 for more information.

Regarding the Form 1099 issue, it is the opinion of our office that a state is not required to report interest and additions to tax that are forgiven as part of a tax amnesty program on Form 1099 irrespective of the tax consequences to the taxpayer.

Section 6041

Section 6041(a) of the Code provides, in part, that persons engaged in a trade or business that make payments in the course of such trade or business to another person of fixed or determinable gains, profits, and income of \$600 or more in any taxable year must render a true and accurate return to the Secretary setting forth the amount of such gains, profits, and income, and the name and address of the recipient of such payment. Forms 1099-MISC is generally used for reporting payments pursuant to section 6041(a).

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Section 1.6041-1(f) of the Income Tax Regulations provides that a payment is deemed made when it is credited or set apart to a person without any substantial limitation or restriction as to the time or manner of payment or condition upon which payment is to be made, and is made available to him so that it may be drawn at any time, and its receipt brought within his own control and disposition. "[A] payment occurs with the transfer of possession, dominion, or control over money or its equivalent from a person who up to that point had been exercising such prerogatives over the same to another who is due the funds." Manchester Music Co. v. United States, 733 F.Supp. 473, 482 (D.N.H. 1990).

Whether a payment has been made for purposes of filing an information return under section 6041 requires a factual determination. In our opinion, the forgiveness of interest and additions to tax under a tax amnesty program does not constitute a "payment" as contemplated by section 6041(a). Therefore, a state is not required to report, under section 6041, interest and additions to tax that are forgiven under a tax amnesty program.

Section 6050P

We also considered whether section 6050P requires reporting. Section 6050P(a) requires that any applicable entity that discharges (in whole or in part) indebtedness of any person during any calendar year must make a return setting forth the name, address, and TIN of each person whose indebtedness was discharged during such calendar year, the date of the discharge and the amount of the indebtedness discharged, and such other information as the Secretary may prescribe. Form 1099-C is prescribed for reporting discharges of indebtedness.

Section 6050P(c)(1) defines the term "applicable entity" to mean an executive, judicial or legislative agency (as defined in section 3701(a)(4) of Title 31, United States Code), and an applicable financial entity. Section 6050P(c)(2) defines the term "applicable financial entity" to mean: 1) any financial institution described in section 581 or 591(a) and any credit union; 2) the Federal Deposit Insurance Corporation, the Resolution Trust Corporation, the National Credit Union Administration, and any other Federal executive agency (as defined in section 6050M), and any successor or subunit of any of the foregoing; 3) any other corporation which is a direct or indirect subsidiary of an entity that is any financial institution described in section 581 or 591(a) and any credit union, but only if, by virtue of being affiliated with such entity, such other corporation is subject to supervision and examination by a Federal or State agency which regulates such entities; and 4) any organization a significant trade or business of which is the lending of money.

Section 6050P only applies to the entities described in the preceding paragraph. Because states are not applicable entities, the state is not required to report on Form

1099-C any interest and additions to tax that are forgiven under a tax amnesty program.

If you have any questions, please contact Joseph Dewald at (202) 622-8094.